



----- AGENT AGREEMENT -----
Terms and Conditions for
Print on Demand Chart Agents

1) PURPOSE –

The Office of Coast Survey, National Ocean Service, NOAA compiles the official nautical charts for the United States. Printed versions of these charts are used by regulated vessels for safe navigation and to comply with federal chart carriage regulations, and they are used by others for navigation and other purposes. As such, nautical charts are an important contributor to the accomplishment of NOAA's mission of supporting the nation's commerce with information for safe, efficient, and environmentally sound marine transportation.

NOAA's purpose in establishing Print on Demand (POD) Agent Agreements is to enhance the safety and efficiency of marine navigation by providing mariners paper nautical charts that have been updated by NOAA and manufactured using print on demand technology. Agents play an important role in this safety mission by acting as printers and distributors of the NOAA POD nautical charts. Their effort is funded and incentivized by their sale of the resulting charts.

This Agent Agreement permits entities to receive official digital data files from NOAA which, when printed according to the NOAA standards and the terms and conditions herein, will produce official nautical charts which the Agent may then sell. This Agreement describes the conditions under which an authorized Agent agrees to print and sell the official Print on Demand nautical charts.

2) AUTHORITIES –

- a) 33 U.S.C. 883b, which states:

“In order that full public benefit may be derived from the operations of the National Ocean Survey by the dissemination of data resulting from the activities herein authorized, and of related data from other sources, the Secretary of Commerce is authorized to conduct the following activities:

- (1) Analysis and prediction of tide and current data;

- (2) Processing and publication of data, information, compilations, and reports;
- (3) Compilation and printing of nautical charts;
- (4) Distribution of nautical charts and related navigational publications.”

b) 33 U.S.C. 883f, which states:

“The Secretary of Commerce is authorized to contract with qualified organizations for the performance of any part of the authorized functions of the National Ocean Survey when he deems such procedure to be in the public interests.”

c) 33 U.S.C. 892(b)(2) which gives the Administrator the following authority:

“may enter into contracts and other agreements with qualified entities, consistent with subsection (a)(8) of this section, for the acquisition of hydrographic data and the provision of hydrographic services;”

The authority in 33 U.S.C. 883b(2) and (3) permits the compilation of the POD nautical charts. The authority in 33 U.S.C. 883b(4) permits their distribution. The authorities in and 33 U.S.C. 883f and 33 U.S.C. 892(b)(2) permits contracts such as this Agreement.

3) **DEFINITIONS –**

Authorized NOAA POD Agent (hereinafter referred to as “Agent” and “POD Agent”) means an entity that has signed this Agreement, has had this Agreement cosigned by the Director, Office of Coast Survey, National Ocean Service, NOAA, and who is adhering to the terms and conditions herein while printing and distributing NOAA POD charts.

NOAA Print on Demand nautical chart (NOAA POD chart) means a printed version of NOAA POD files, printed in conformance with NOAA specifications and standards, and adhering to the terms and conditions of this Agreement. The NOAA POD chart is an official NOAA nautical chart that may be used to meet federal chart carriage regulations,

NOAA POD files means digital data provided by NOAA for the purpose of printing POD charts. These digital data, when printed in accordance with NOAA standards, produce a NOAA POD chart.

4) **METHOD OF APPLICATION TO BECOME A NOAA POD AGENT –** An entity may apply to become a POD Agent by agreeing to the terms herein, and submitting a signed copy of this Agreement to:

Director
Office of Coast Survey, NOAA (N/CS)
1315 East West Highway
Silver Spring, MD 20910
USA

This Agreement will become effective upon co-signing by the Director, Office of Coast Survey, NOAA, and acceptance by NOAA of an Agent-produced POD nautical chart product qualification sample demonstrating the Agent's ability to meet the NOAA POD Chart Specifications and Standards, and the other terms and conditions herein. NOAA has sole authority to accept or deny an applicant as an authorized POD Agent.

5) **RESPONSIBILITIES OF A NOAA POD AGENT** – Agent agrees to:

- a) Adhere to the terms and conditions of this Agreement.
- b) Adhere to the standards of quality and service for POD charts, their delivery, and related matters as specified by NOAA and as used in the product qualification sample. Said standards are appended to this Agreement and are part of this Agreement.
- c) Sell only POD charts made from the most recent NOAA POD files available to Agent in order to insure that mariners have the most up-to-date information. When notified that POD files have been updated or replaced, Agent shall begin processing the updated or replaced files for immediate use.
- d) Retrieve the NOAA POD files as produced by NOAA and in the manner specified by NOAA, e.g. download from a secure .FTP Internet site.
- e) Perform any necessary file manipulation to produce a final POD chart that complies with the NOAA POD chart standards and specifications and with this Agreement.
- f) Perform quality control on NOAA's POD files with errors promptly reported back to NOAA for correction. This quality control shall be limited to items that would impact the Agent's operations and responsibilities, and need not include the underlying cartography.
- g) Establish and operate a manufacturing, sales, and distribution operation following accepted industry practices to make and sell the POD charts. Agent will furnish all equipment, materials, and management necessary for chart production and distribution. Agent will develop and maintain, at Agent expense, appropriate software to interface with NOAA, to perform the necessary order processing, file management, chart composition, error checking, plotting, and to perform all the associated business activities such as billing and shipping.
- h) Submit initial product qualification samples to NOAA and submit product qualification samples for reacceptance after any significant change in Agent's processes, equipment, or product.
- i) Manufacture and offer for sale the entire suite of the POD charts. This shall include all versions and customizations offered by NOAA now and in the future.
- j) Make the POD charts continuously available so long as this Agreement is in effect.
- k) Make a good faith effort to print and ship charts within 24 hours of receipt of an order.
- l) Protect the digital files from corruption or theft using industry-standard computer security practices.
- m) Protect the NOAA POD files from public release and use said files only in the production of the Print on Demand charts unless otherwise authorized by NOAA.

- n) Make no advertising or claim that is inaccurate, misleading, which encourages an unsafe navigation practice, or which results in embarrassment to the Department of Commerce or to NOAA.
- o) Sell NOAA POD charts to the federal government at the lowest available wholesale price offered to any other entity.

6) **RESPONSIBILITIES OF NOAA**

- a) Adhere to the terms and conditions of this Agreement.
- b) Provide NOAA POD files to Agent so long as this Agreement is valid and in force. The files include those listed below. Note: NOAA may, with reasonable notice and recognition of the changes required by Agent, from time-to-time change the NOAA POD files to accommodate evolution in POD.
 - i) Master order .XML or equivalent – an ASCII file that describes each chart product in the NOAA POD chart suite
 - ii) Chart.XML – an ASCII file that describes the composition of the chart portion of a POD product each time the chart is changed
 - iii) KAPP.XML – an ASCII file that describes a chart piece (e.g. main panel, inset, ...) every time the piece changes
 - iv) Original raster files for each chart piece in 762dpi .CRL format
 - v) Value Added File (VAF) – a file or files to be included on some products that are provided in 600dpi .TIF raster format.
 - vi) Overlay files - files to be included on some products in that are provided in 400dpi .TIF raster format
 - vii) Dates files – a set of ASCII .TXT files (current_time.txt, ChartInfo.txt, Dates.txt, DatesInfo.txt) that provide chart metadata
 - viii) Subscription_Export.XML – metadata listing recently updated charts
 - ix) Catalog_Export - an ASCII file that lists all available product and product types
- c) Notify the Agent each time a new edition of a chart is issued.
- d) Establish the official status of the resulting products for meeting chart carriage regulations of the U.S.
- e) Publicly recognize Agent's compliant products as "official NOAA POD nautical charts."
- f) Accept responsibility for the correctness of the NOAA POD files provided to the Agent for assembly into official nautical charts.
- g) Establish a retail price cap on POD charts.
- h) Make appropriate changes to its software and processes, at its own expense, to support agreed-upon changes that affect NOAA and/or Agent's software and processes.
- i) Consult on selection of papers and plotters while maintaining as confidential the equipment and paper used by all Agents.
- j) Perform quality control on each initial qualification sample, new edition, and after substantive changes to software or processes, or shall explicitly waive such action.
- k) Make a good-faith effort to keep all data files available at all times.

- l) Notify Agent immediately of any known errors in the NOAA POD files which result in corrective action taken by NOAA to assure that the NOAA POD charts are correct and accurate and in compliance with federal chart carriage regulations. Notify Agent of the source of the error, corrective action taken by NOAA, identify the NOAA POD files affected, and specify date/time of the error. Communicate the correction to users of NOAA POD charts and government agencies affected.
- m) Make statistics available concerning the quantity of NOAA lithographic nautical charts sold each month.

7) **SALES PRICE** – Agent agrees to limit the retail price of POD charts he or his retailers, redistributors, remote printers, and subagents produce and/or sell to no more than \$28.00 per chart. Shipping, handling, and taxes may be added to his amount. NOAA shall have the authority to unilaterally change, with reasonable notice to Agents, this price cap at its discretion. This price cap will be increased to the extent of any increase in payments to NOAA under Section 8 herein.

8) **PAYMENTS TO NOAA** – Agent shall pay NOAA an amount equal to fifty cents (\$0.50) per POD chart sold by the Agent towards sums permitted or required to be collected by NOAA. With reasonable notice to Agents, NOAA shall have the right to reasonably change the amount of the payment as it deems appropriate or as it shall be required to do by law.

Said payment shall be calculated and paid within thirty (30) days after the end of each calendar quarter by check made payable to “U.S. Department of Commerce, NOAA,” at an address specified by NOAA. Payment shall be accompanied by a report setting forth appropriate details for calculating the payment.

Said payment shall be waived for the first 60 days of the first Agent Agreement between NOAA and Agent. This waiver does not apply to renewals or subsequent Agent Agreements between NOAA and Agent for the purposes described in this Agreement.

9) **VOLUME OF SALES** – NOAA shall have the authority to establish a minimum annual number of NOAA POD charts that Agent is required to sell. Failure to meet the minimum sales requirement shall be grounds for termination of this Agreement.

10) **RETAILERS, REDISTRIBUTORS, REMOTE PRINTERS AND SUBAGENTS** – Agent may establish networks of retailers, redistributors, subagents, and/or remote printers. Agent may establish prices, and terms and conditions with these entities. Agent shall insure that its retailers, redistributors, remote printers, and subagents adhere to the terms and conditions herein as applicable, and that they are only selling NOAA POD charts made from the most recently available NOAA POD files.

11) **DURATION OF THE AGREEMENT AND RENEWAL** – This Agreement shall be for a term of 3 years commencing from the date of the last signature. Agents may

12) TERMINATION –

- a) NOAA may terminate an Agent's agreement, its access to NOAA POD files, and its status as a POD Agent at any time and without prior notification if, in its sole judgment, public safety is adversely affected by actions or products of the Agent.
- b) NOAA may terminate an Agent's agreement for cause and terminate Agent's access to NOAA POD files at any time by giving 30 days written notification. Said notification shall cite the specific reasons for which this Agreement is being terminated. Agent shall have said 30 days to remedy the cause for termination. Agents terminated for cause normally will not be considered for reinstatement for one year. Causes for termination are:
 - i) Failure to conform to the Terms and Conditions stated herein.
 - ii) Failure to make a reasonable commercial effort to make and sell NOAA POD charts.
 - iii) Assignment of this Agreement to another entity except as permitted herein.
 - iv) Failure to consistently produce products that meet the Standards and Specifications provided herein and subsequently promulgated by NOAA.
- c) Either party may terminate this Agreement without cause at any time by giving 3 calendar months written notification.
- d) In the event this Agreement ends for any reason, Agent shall return all data, digital files, and information provided by NOAA then in its possession. In addition, Agent shall cease to manufacture and/or sell NOAA POD charts, and shall notify all retailers, redistributors, subagents, and/or remote printers in Agent's networks for the distribution of its product that its certification has been terminated and that products being distributed by Agent may no longer be valid for all uses such as compliance with federal chart carriage regulations.
- e) NOAA participation in the provision of NOAA POD chart files is subject to the availability of funds. NOAA shall promptly notify Agent of changes in the availability of funds that affect the provision of POD charts.

13) RECORD KEEPING –

- a) Agent agrees to establish a reasonable means of communicating with recipients to whom it has distributed NOAA POD charts. In the event NOAA finds it necessary to provide NOAA POD chart users with information about the POD charts, such as safety notifications, Agent agrees to use its reasonable efforts to notify the recipients of that information. Any records of said recipients provided to NOAA shall not be released by NOAA nor used for any other purpose.
- b) Agent shall keep complete and accurate financial records of its POD business, and said records shall be made available to NOAA or its designated representative for audit upon 30 days notification. NOAA shall treat all such information as confidential.
- c) Agent agrees to report quarterly to NOAA on the monthly quantity of each NOAA POD chart that was distributed. Said report shall be provided within 2 weeks after the end of a calendar quarter.

14) AUDIT AND INSPECTION –

- a) A representative of NOAA may audit, during business hours and with reasonable notification, the Agent's compliance with this Agreement at any time.
- b) A representative of NOAA may inspect, during business hours and with reasonable notification, an Agent's POD charts at any time. Agent shall supply a small quantity of charts at no cost to NOAA upon request for this purpose. Said quantity shall not exceed the number of new editions published per year.
- c) Agent agrees to provide information reasonably requested by NOAA's representative in the performance of an audit or inspection. NOAA shall treat all such information as confidential.
- d) Agent agrees to take corrective action identified by NOAA from an audit or inspection within 24 hours or as soon thereafter as is reasonably practical.

15) USE OF THE NOAA EMBLEM AND NAME – Agent, together with its retailers, redistributors, subagents, and remote printers may use the phrase "Authorized NOAA POD Chart Agent" and the Authorized NOAA POD Chart Agent "Certificate of Authenticity" which includes the NOAA emblem, in correspondence and promotional materials. Other use of the NOAA emblem is prohibited without prior written consent from NOAA.

16) AGENT DISTRIBUTION RIGHTS – Agent does not have exclusive rights to distribute NOAA POD charts in any geographic area or to any group of consumers. NOAA reserves the right to determine the number of Agents. NOAA may choose to manufacture and distribute charts itself in order to assure a reliable and broadly available POD chart supply. NOAA agrees to promptly notify Agent of any decision to manufacture and/or distribute POD charts itself.

17) INSURANCE – Agent agrees to carry insurance of a type and in an amount reasonably appropriate for the product being printed and sold.

18) LIABILITY – Subject to Section 6 of this agreement, Agent agrees to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, arising out of actions by the Agent, its employees, or any Party acting on its behalf or under its authorization, in performance of activities under this Agreement.

19) TRANSFER OF AGENCY – This Agency is not transferable except that the Agent may assign this Agreement to the successors or assignees of a substantial portion of the Agent's business interest to which this Agreement directly pertains. A change in ownership, firm name, or address shall be reported immediately to the NOAA in writing.

20) CONFIDENTIALITY – Any Agent confidential information disclosed to NOAA by Agent, and appropriately identified as confidential, shall be deemed confidential and proprietary to Agent. Confidential information shall include all data, materials, vendors, products, processes, techniques, technology, computer programs,

21) **AMENDMENT** –

- a) The Terms and Conditions herein may be amended unilaterally by NOAA if, in its sole judgment, public safety is adversely affected by actions or products produced under this agreement. NOAA shall make reasonable recognition of the time required for Agent to accommodate said change.
- b) The Terms and Conditions herein may be otherwise reasonably amended by NOAA upon giving Agent 30 calendar days notice and opportunity for comment; provided that Agent may within 30 calendar days thereafter terminate this agreement.
- c) NOAA may reasonably amend the NOAA POD Specifications and Standards at any time in order to better fulfill its mission.
- d) Amendments shall apply to all Agent Agreements including those already in effect in order that all Agents are subject to identical Agreements.

22) **ACTIONS NOT EXPRESSLY PERMITTED** – Actions not explicitly permitted to a POD Agent by this Agreement, and which are related to the printing and distribution of NOAA POD charts and the use of NOAA POD files, are prohibited.

ACCEPTANCE BY AGENT

I agree to become an authorized NOAA POD Agent, and accept and will adhere to the foregoing terms.

Signed (for the Agent) Date

Printed Name:

Business Name:

Address:

Phone: _____ Fax: _____

E-mail: _____ Website: _____

ACCEPTANCE BY NOAA

Above named company is accepted as an authorized NOAA POD chart agent.

Director, Office of Coast Survey, NOS, NOAA Date

Printed Name:

Address:

Phone: _____ Fax: _____

E-mail: _____

NOAA POD Chart Specifications and Standards

A sample POD chart may be obtained from NOAA for use as a comparison standard. All POD charts produced to meet these Standards and Specifications shall be comparable to this comparison standard, and in all respects shall be suitable for their intended purpose.

- 1) Manufacture the POD charts by faithfully printing the NOAA POD files exactly as they are provided by NOAA and without modification.
- 2) In the event that some assembly of chart pieces is required, the assembly instructions provided by NOAA shall be followed exactly.
- 3) Only the most recent NOAA POD files made available by NOAA shall be used to print POD charts.
- 4) The NOAA POD charts shall be printed on NOAA-approved papers.
- 5) Charts shall be legible and readable by a person with normal vision from a distance of 24 inches under lighting conditions comparable to the bridge of a ship.
- 6) The chart colors shall be those specified by NOAA and shall not be discernibly different from the colors in the NOAA-provided comparison standard.
- 7) Agent shall retrieve new POD files from NOAA at least once per day.
- 8) Updates to POD charts provided by NOAA shall be made readily available to Agents' customers in a timely manner.
- 9) Agent printing the chart shall identify themselves and provide contact information on each chart printed.
- 10) Charts shall be printed and shipped within one business day of receipt of an order.
- 11) Quality shall be suitable for the intended use and shall be comparable to the comparison standard provided by NOAA.
- 12) NOAA POD charts shall be true to chart scale with a tolerance of 0.06 percent from the NOAA comparison standard. Size variations shall be linear.
- 13) The NOAA POD charts shall be printed on NOAA-approved equipment. The equipment used to plot NOAA POD charts shall quote a line accuracy of at least 0.2 percent of plot length.